

PROOF VERSION ONLY

LAW REFORM COMMITTEE

Inquiry into powers of entry, search, seizure and questioning by authorised officers

Melbourne – 13 December 2001

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Mr M. Diepstraten, Environmental Health Officer, Hume City Council.

**Necessary corrections to be notified to
executive officer of committee**

The CHAIRMAN — On behalf of the Law Reform Committee I welcome you to our hearing and thank you for taking the time to attend. The evidence you give will be recorded by Hansard. You will have an opportunity to proofread the transcript, and after doing so we ask that you then send it back to the committee staff. I invite you to speak to your paper or notes, after which my colleagues will be happy to cross-examine you.

Mr O'DONOGHUE — Thank you. It is a very brief paper, as you can see. The thought we wanted to put across initially is that in terms of legislation affecting local government administration, the powers of entry, search, seizure and questioning are substantially satisfactory.

The role of council authorised officers is, as we see it, to enforce legislative, regulatory and local laws in the overall interests of the community, and that community consists of a whole range of people — the residents of the municipal district, visitors to it, the businesspeople within it, people working in that atmosphere, and probably others whom we come across from time to time.

The span of legislation of course is extraordinarily wide. Public health, planning, building, the environment and public behaviour are looked at in terms of the Summary Offences Act, the Litter Act, things like the Fundraising Appeals Act and a whole range of local laws that councils have introduced for the regulation of their community within their municipal district. The list goes on — tobacco legislation, food, domestic animals, protection of public property, livestock controls, road safety, fire and emergency services, valuations, et cetera.

The broadest power for local laws officers is contained in section 224 of the Local Government Act, and it is the most commonly used power. It appears to be substantially adequate for their purposes. One possible exception is the lack of reference to arrest powers, which, generally speaking, are not important but can be important if a person refuses to provide evidence of their identity or to answer questions about their identity in circumstances in which an offence has been observed.

We are conscious that there are powers under section 458 of the Crimes Act to address that sort of situation in terms of common-law offences or offences against an act of Parliament, but that section does not extend to breaches of regulations or breaches of local laws. There is also the restriction relating to it not applying to people who are under 17. That might be quite difficult to determine at times.

In terms of the Domestic (Feral and Nuisance) Animals Act, which has more specific powers relating to authorised officers, since the commencement of the operation of the act we have had some concerns relating to section 74(2), which we always thought was badly worded and talks about entry and search of any land, vehicle or building not occupied as a residence. We thought the limitation ought to be merely to the residence rather than to the land or vehicles that might be in the perimeter. You can imagine that a person trying to collect a stray dog that had jumped into a residential property could, on one interpretation of this act, not proceed onto that property to collect the dog, even though it might not have belonged to the people in that property.

Recent amendments to the Animals Legislation (Responsible Ownership) Bill, which I gather has passed all stages of Parliament but is pending assent, have addressed that issue and have changed the reference to limiting purely the entry to buildings. There remains a lack of clarity in section 77, which relates to the seizure of dogs and cats. Frequently people ring up a council wanting it to seize a cat that is on a particular premises. It might be a semi-wild cat. The question is whether the power of seizure extends to the council trapping that animal, which frequently is the only way to collect them.

In section 76(2) there is a reasonable excuse provision entitling people to refuse to answer questions where those questions would incriminate the person. We understand the intention of the section, but one of the difficulties is people seek to use that provision when they are in the company of an animal — a dog, for instance — where an offence has been committed and the question put to the person is purely about identity. The dog should be bearing identity; it is an offence not to and that might be one of the offences. The person in charge of that animal at the time is deemed by the legislation to be the owner of the animal and this response of refusing to give an answer frequently comes up on the basis that that would incriminate them. We would say it does not incriminate them; it only identifies them.

There are a number of unexpected circumstances that crop up from time to time and I will touch on a couple of them. An off-duty local laws officer encountered a horse at large at night on a highway and did not have specific powers under the Impounding of Livestock Act. That act has some very restrictive provisions that relate to a council officer generally when the animal is on council property or the officer is called to a private property to deal with an animal. It does not extend automatically to Crown land such as a Crown land highway so specific authority is needed for that officer to act in that area. In this circumstance the suggestion was that the officer impounded

the animal, a horse, at night on a road without authority to do so in the public interest. We would argue that there is some implied common law right to do that. The question that subsequently arose was whether what he did was legal and whether that aspect of it was open to question.

An alternative situation arose when two officers authorised under the Domestic (Feral and Nuisance) Animals Act went out to deal with a complaint by an individual about a horse left on their property without identity and without authority. When they got out there they observed the horse in an absolutely debilitated state; it was starving and obviously in agony and they authorised the destruction of that animal. There is power for council officers to be authorised under the Prevention of Cruelty to Animals Act and if they had been authorised under that purpose their action would have been perfectly legitimate. However, those particular officers were not authorised under that act so what they did was not authorised. With adequate forethought, had they known what they were going to face a person with the appropriate authority would have been sent out. With subsequent instruction that person would not do that a second time. They would have come back to get someone with authority, but you can understand the reaction to a somewhat desperate position where someone goes out to look at an animal in agony and wants to do something about it immediately.

In terms of local administration, when it comes to things like parking offences we believe they are generally well understood. The thought of warning people about offences there is not really entertained. That does not happen with some of the business-related offences either, but in general the local government administration attempts to place a heavy emphasis on alerting members of the community particularly to local laws that might not be well known. They give people the opportunity to address the concern that has been raised and give them time if necessary to do that and only proceed to prosecution if circumstances are at such a level that they are a cause of concern to the community and need to be addressed.

The powers of entry, search and seizure are generally only relied on by council officers where the nature of what is prohibited or regulated demands that entry, search or seizure takes place. In terms of questioning, the general situation is really to identify an individual who has been observed committing offence with a view to taking that matter further.

That is a very general and not too specific run-down I suppose of my perspective of council officers' powers. I have not gone into detail about the provisions under the various acts. Mark is an environmental health officer with the Hume City Council and I am a legal consultant to the Municipal Association of Victoria (MAV), having worked in the local government area in various different connections for some 30 or more years. We are open to your questions.

The CHAIRMAN — Would Mark like to speak or will he help in responding to questions?

Mr DIEPSTRATEN — That is fine. Unfortunately that kind of information is not relevant to my field. I would not want to speak on the capture and detention of animals but I will speak on the Health Act or the Food Act.

The CHAIRMAN — Would you like to make some general remarks?

Mr DIEPSTRATEN — My understanding is that there is, or maybe there is not, a concern about the rights of officers to enter premises, to make inquiries and so on with respect to the personal rights people may have to privacy and such issues.

Ms McCALL — Do you mean private residences or public premises?

Mr DIEPSTRATEN — With respect to any premises. I am not sure what your scope is with this inquiry. I have not had much time to brief myself on it. I take it that it is the protection of rights of individuals and businesses, and so on.

The CHAIRMAN — As to the general scope of the inquiry, we can pass a note through to you and you can take a moment to peruse it. I suggest members might ask some general questions regarding the powers of inspectors. We can take on board any comments you would like to make perhaps by way of a follow-up submission. That might be useful. I will start things rolling and pose a question as to what happens in the circumstances where a request is made of a person who is believed to have infringed a local by-law and that person refuses to give their name and address. What might the approach of the council inspector then be?

Mr O'DONOGHUE — Accept that much of my background is from a distance so the information I have comes from talking to local laws officers. My understanding is that the officer will pursue the issue by trying to

convince the individual that he has the right to that information and that in most instances it is an offence to refuse to give that information. If it does not come forward my understanding is a variety of alternatives might be looked upon. If a policeman is handy at the time — which is generally not the case — they might call for assistance. It might be a matter of following the individual with the dog to see where that individual goes and pick up the address in that manner. It might happen that a person is committing an offence on an unregistered motorbike or something of that nature and the officer might attempt to confiscate or impound the vehicle that is there at the time. In many instances the question of arrest is looked at, but of course if it is a young person that cannot be contemplated.

The CHAIRMAN — Why is that not able to be contemplated in the case of a young person?

Mr O'DONOGHUE — Because the Crimes Act provision relating to arrest has an exception provision related to persons under 17.

The CHAIRMAN — Is that the section 458 provision, the citizen's arrest power, or the section 464?

Mr O'DONOGHUE — The section I mentioned, section 464E, provides something to the effect that the arrest power does not apply to a person under 17. To answer your question, a number of alternative ways are looked at but all mean an increase in effort, an increase in time and a significant risk that the individual escapes detention. The prospect of following a person is relevant only if there is not another issue that the authorised officer has to turn to immediately and it is not an issue if the person keeps walking into the dark and you do not catch up with them. It depends on the cunning of the individual concerned. If the offence was regarded as a relatively minor one, probably a bit of a discussion would take place about the issues and the problem the person faces in the future if they persist with this sort of attitude and it might be let go at that.

Ms McCALL — Thank you — —

Mr O'DONOGHUE — Perhaps if I just add a little bit more, the other issue that goes with arrest is that it is not a power normally effected by local laws officers. It is a power that very few would ever attempt to use because they are not trained to be involved in arrest mechanisms and they are not carrying a weapon or anything of that nature. Generally speaking, they would be uniformed. However, the ones that are ex-police and who have been trained in that way may well resort to that. I am sorry, I interrupted you

Ms McCALL — That is all right. Can I take you back to the nature of what a council officer is and how you would select someone to be one? They are required to know an awful lot about an awful lot of acts of Parliament. I come from a human resources background. Surely there would be an assumption in the selection criteria that you would use that they would be fully trained and conversant with all their rights and responsibilities under all the acts of law they may come into contact with. I am particularly interested in the one about going out to the horse. I would make the assumption that if they are council officers exercising that sort of authority they would have the relevant training to tell them that they could not shoot the horse until they had done whatever it was. Does the MAV have a specified training course for everybody or do the councils do it on ad hoc basis?

Mr LANGUILLER — If I might, given the relationship that you might have with other authorities such as the RSPCA, would it not have been appropriate for that officer to have liaised with them?

Mr O'DONOGHUE — It could have been. I think the first response I would make to your question is that if persons who were ideally trained in all these forms of legislation and approaches were readily available in the community and were applying for the job of course the council would reach out and seek that sort of person. In terms of some job advertisements, my understanding is there is a fair chance of some applicants having a significant background and their ability to move into a number of fields is relatively proximate. Keep in mind that the Melbourne City Council might have 1000 authorised officers; I do not know what the number is, but it would have a very large number. My understanding is that they assess people in terms of what their background is, and they give them a basic introductory course in house on what they are expected to do immediately. They would limit the range of activities that that particular authorised officer was exercising power in to the basic training. It may be that the individual goes out looking at parking infringements only while he picks up an element of experience in that area and is then moved to broader atmospheres.

The one I mentioned with the Domestic (Feral and Nuisance) Animals Act is one where I think many councils have local laws offices appointed under that act and where that is their sole role. If that is the case then that is the situation they apply. Of the ones that are appointed under the Domestic (Feral and Nuisance) Animals Act, only a small proportion are also authorised under the Prevention of Cruelty to Animals Act, because the council's primary

direction is to look at stray dogs, biting dogs and issues that arise under the first act, not the second act.

Some will be authorised under the second act. It is sometimes a situation where the individual is not as experienced, so he can exceed his authority. What happens so often is that a new officer will go out under the supervision of an experienced officer and will be given on-the-job training in that type of circumstance. But what can happen, and what I was suggesting happened in this case, is that two people who were not as experienced went out together, did not expect to encounter the situation they did and exceeded their authority.

Ms McCALL — I understand that that should clearly be a role for local council, but I cannot understand why they would be sending out an authorised officer with such rights when he does not understand which acts of Parliament he may or may not be covered by. The Municipal Association of Victoria has an opportunity to set up a wonderful training course for them. If there is a level of inconsistency among the levels of offices in various councils and municipalities, then surely this is where you will encounter some of these issues?

Mr O'DONOGHUE — I do not see that quite in the situation of a deficiency, if I can put it that way. Different councils do things differently. A rural council will look at a local laws officer — it may have only one local laws officer — who is involved with parking and things of that nature, which is probably irrelevant to them, but the relevance to animals on roads and so on is highly relevant. The issue of stray dogs is not of much concern, because farmers tend to have well-trained dogs that are valued and addressed in a different manner to the average pet animal. One of the problems with pet animals is that frequently parents buy them for their children and then over time the children lose interest.

Cats are a different situation, in that they can breed prolifically, and some are not owned by anybody. The rural situation is different. A council like Melbourne City Council is different, and it is more likely to have specialised officers authorised for specific purposes and to have a number of different categories of officers. I do not think a single training course would automatically address these situations. I believe a course is available at the Royal Melbourne Institute of Technology, which a number of people are undertaking. From time to time a number of courses have been arranged by particular groups of officers. At one stage they had a weekly live-in course at the police academy for about 30 or so officers, who were trained in prosecution techniques, investigation techniques, evidence gathering and so on, but the emphasis will change from council to council and from officer to officer within councils.

A number of people are getting away from local laws officers, such as the environmental health officer, the planning officer and the building surveyor, who have undertaken specific training courses. Many councils will have an in-house legal officer who will assist in the training of people in that particular area. Essentially it is a matter for each council to prepare its officers, subject to what information they had before they were engaged by the council, for the task they want them to undertake. What I was emphasising before was that sometimes the unexpected happens. The officers are prepared for one task but are faced with an entirely different task.

Mr LANGUILLER — You indicated several times that councils deal with issues in varying and different ways. As a layman I assume that the law, such as the law on arrest, is the same. For example, if I went from one municipality to the other I would expect to be dealt with in relation to the same issue in a similar way. Will you comment on a specific circumstance where you think one council may deal with the same issue in a different way, and is that the way to go? Does that not indicate that perhaps we should step up training structures and mechanisms?

Mr O'DONOGHUE — With respect, I do not believe it does. A particular council may have a community reaction to, say, a number of cats in a particular area around, for example, the Yarra Ranges and Sherbrooke forest, which is a case in point. The emphasis on the enforcement of the Domestic (Feral and Nuisance) Animals Act is not a change in approach but a change in priority and in the volume of staff directed to that area, which will vary from council to council. A council such as the Shire of Yarriambiack may say that it does not have a problem with cats.

As you say, the law is essentially the same for every council, except that local laws made by individual councils will vary according to demand in that local area. It is a response to community reaction to the type and extent of administration that is required in that area. One clear example is in relation to parking. In many rural towns the only concern that ever exists with parking is the person who parks in a disabled parking bay when he is not entitled, or the person who perhaps parks in the middle of the street. The emphasis in that council is not on the parking officer's duties, whereas obviously in the inner city it is entirely different.

I do not think there is a major variation in the way things are done, but there is a major variation in priorities, volumes and approaches. Maybe in one area one person looks at a whole range of legislation — although the local laws officer will not be looking at health, building and planning-type issues — whereas a metropolitan council may have specialised officers looking at a range of different activities, with a supervising person coordinating them.

Mr KATSAMBANIS — I understand that issues relating to domestic and feral animals will differ from council to council. In Prahran and South Melbourne I can tell you that stray horses on roads are not an issue. Victoria has 78 councils, all of which have powers conferred on them by acts Parliament. It is of major concern to people in my electorate, where powers have been increased over the past few years in areas such as food and health, and now with tobacco regulations and so on, and it all seems to relate to environmental health officers.

Those powers that are generally conferred on all councils throughout Victoria are basically identical, because they are there for the protection of public health specifically. But they interfere in many ways, as you pointed out, Mr Diepstraten, with people's accepted rights to run their businesses and be the kings of their castles, or whatever. I understand that environmental health officers are professionals who have specific training, but they do not have specific training in a professional capacity in evidence gathering, interviewing techniques and compliance, which are unique inspectors powers laws included in acts.

What formal training has been established to ensure that environmental health officers, say in the Shire of Delatite or the City of Port Phillip, have an understanding of their rights and responsibilities, and is that training at some national standard?

Mr DIEPSTRATEN — There is an accredited four-year degree course at Swinburne University, a major component of which is law. They study the rules of gathering evidence, and they deal with mock cases throughout their period of training. Then there is experience in the field, which is gathered over time.

In the days when I came out we used to run probably 12 to 20 prosecutions a year, but now we run one or two if we are lucky, because we have chosen to approach it in a different way. We are relying more heavily on communication skills. A lot more of the carrot-on-the-stick approach rather than the baseball-bat-type activity is undertaken. Currently with food legislation the state has decided to defer and defer, which unfortunately has left us constantly telling businesses that they must prepare for 'this', when the next thing you know, 'this' has moved and it is now 'prepare for that' — and the next thing you know, 'that' has moved. As the state keeps changing the position of the goalposts, the environmental health officers are looking somewhat sad. We can rely heavily on our communication skills, but at a certain point we are whingeing just as much as they are.

I am not happy with that particular area of the food legislation. I hope it will come to a close so long as this is the last extension. We hope to resolve that in 2003, but it has had a benefit. Although the state jumped into it without consultation with industry groups, it has had the effect of enhancing knowledge in the area. We have many proprietors who are interested particularly in the marketing values of hygiene. Those people now wear work gloves, but it is a pity they do not know how to use them. It looks good for the industry, and they use that to market the hygiene aspect in preparing food. Things have been learnt along the way. I do not say it is wasted, but it was badly organised.

Different councils have different approaches. Some councils that have skilled staff offer no prosecution policies in health, because it enhances their ability to communicate with people and therefore they do not fear you. That happens across different cultures. Some cultures automatically fear you. The moment you walk in they think, 'This guy is a health inspector who has a machete to chop my head off', because that is what may happen in their own country. We have a different system, and we have to get those people used to it. It would be tragic if through language difficulties we ended up with somebody in court on some issue that was not that relevant to public health, which can happen. If you read everything into the guidelines and the legislation, you can prosecute people for things that have no bearing on whether someone will be poisoned next week.

Mr LANGUILLER — I represent Sunshine, which is similar to your area, and I know many small traders have difficulties in working through some of these issues. On that basis, how do you communicate?

Mr DIEPSTRATEN — It is a matter of building up relationships and trust. I have done that successfully with the Turkish community. Unfortunately I do not speak the language, but there has been much communication. The people I deal with accept me for who I am, and I accept them for who they are. We get along on a personable basis and have a cooperative arrangement. Unfortunately there are other political issues above our heads between council and that particular section of the community, but it does not affect their belief in following rules. Once they

know our rules they accept them, because they know that is the way to go.

Mr KATSAMBANIS — The crux is that it is a cooperative approach.

Mr DIEPSTRATEN — Yes, because it has to be.

Mr KATSAMBANIS — In my area the local laws officers, particularly the environmental health officers, are known because they are in the community and easily identifiable.

Mr DIEPSTRATEN — You are the face of council. If you act like a heathen and start knocking people around you will not be a popular council. Councils are selective for that reason, and that is why they look for communication skills.

I regret not having done public speaking. My father used to hang it on me for not having done public speaking, but now I do it automatically. It is a learning process. I will now happily speak on subjects I am familiar with, but when I started it was nerve racking. I was better in court than giving a speech, because I knew the system, which had set rules. Things have changed, and I have changed with them over the 17 or 19 years I have been in the game. We used to take people to court, but now we have switched away from that. Sometimes we have to switch back, but we try to avoid that wherever possible. Many issues can be resolved by doing that.

Mr BOWDEN — Fees and fines are a significant and major public concern. It has been reliably reported that over the past five years the level of fees and fines by Victorian councils is more than \$400 million. In that context, since it is a rising revenue measure and a big impost on the community, in my large electorate, which has several councils, from time to time I get the issue of councils wanting to add speedy detection and traffic infringement capabilities as a revenue, so-called traffic management, issue. Is the MAV adopting a policy of asking the government to widen its powers because some members of the legislature may have other views?

The other issue is the carrying of weapons by parking inspectors. I know reliably that in one council in my electorate a parking officer was caught carrying a flexible baton, which is not on. Firstly, will the MAV talk to us about policy on traffic management and fines policy, and secondly, do you want to carry weapons?

Mr O'DONOGHUE — I do not know what the incidence of carrying retractable batons is, but those who carry them would be authorised. The legislation provides for people to be authorised to carry retractable batons, and their use is minimal. There is always the potential for local law officers to be attacked, and a mechanism of defence might be a realistic encouragement to certain people, but they do not do it without authority.

I do not remember the name of the act, but a provision in the weapons act relates to retractable weapons.

Mr BOWDEN — It is considered a concealed weapon, which is of concern to people in my electorate.

Mr O'DONOGHUE — The only reason they carry a retractable baton, which may be seen as a concealed weapon, is that it is not nearly as large as other batons. They are often moving in and out of their vehicle, and the problem with the long, non-retractable baton is that the officer will take it off in the vehicle and will leave the vehicle to do a particular job, and often the unexpected happens.

Mr BOWDEN — What is the Municipal Association of Victoria's policy on weapons?

Mr O'DONOGHUE — It does not have a policy on weapons. Not all councils see the need to have their officers specifically authorised under the appropriate weapons act.

Mr BOWDEN — Is it an individual council policy?

Mr O'DONOGHUE — Yes.

Mr BOWDEN — Do you want broader powers for revenue generation through traffic management — that is, policing-type powers?

Mr O'DONOGHUE — The answer to that is no. Section 77(2)(b) of the Road Safety Act authorises council officers in respect of offences under the act. I sat on an intergovernmental committee for a number of years, objecting strenuously to the provision restricting council officers on the issue of infringement notices for certain traffic offences. The act gives power to prosecute for certain offences, but not the ability to issue infringement notices. That is nonsense. You do not expect council officers to be chasing a speeding vehicle, but frequently they

are present when someone does a U-turn in the main street or charges across a pedestrian or school crossing — something of that nature.

These offences do not require officers to chase a vehicle, but logically it would be better if they had the ability to issue infringement notices rather than take matters to court. It ties up the court's time and the prosecutor's time and is inconvenient to the person prosecuted. The police object to those infringement powers being given to council officers. I think it is illogical, because they are complementing the police and assisting to make traffic offences less escapable, if I can put it that way. There would be a greater risk of detection.

A few years ago I would have said that the attitude of councils to fees and fines had little to do with the income from them, because the cost of recovering the income was frequently more significant than the amount they received. Some research was done more than 12 months ago which found that council income from fees and fines had increased at a greater rate than rate revenue. Keep in mind that there is power in part 8A of the Local Government Act for the government to restrict the increase in rates, and at various times that power has been exercised. So there is a restriction on the capacity of councils to increase rates, and of course, councils do not want to overburden their own communities.

The research demonstrated that the transfer of government functions, or what had been government functions, to local government for enforcement had increased the cost of council administration so significantly that councils had to turn to other sources of income recovery.

I am not aware of any circumstances where councils have been going out looking at gaining the power to have new offence-making provisions. The opposite is the case. For example, with the recent tobacco legislation a few councils were used as testing regimes. Most councils were against being thrown into that task, but the powers and requirements to exercise those powers were imposed on them. A lot of legislation has been introduced that is doing that.

New provisions in the Domestic (Feral and Nuisance) Animals Act will impose additional powers on restricted breed dogs. Councils are not happy about that. They talk of pit bull terriers being a restricted breed. Experts in the field tell us there is no such breed. It is not a recognised breed, although some organisations claim it is. The difficulty will be that if you suggest that a dog is a pit bull terrier but the owner says it is not, the council officer will have great difficulty establishing that fact. It is yet to be seen whether the new legislation that was enacted to address this issue will be satisfactory.

My understanding is that the government believes pit bull terriers are responsible for enormous numbers of dog attacks, deaths and so on in the community. My belief is that the statistics do not demonstrate that that is the case. My understanding is that Alsatians are the dogs most likely to bite, and part of the reason for that is that they represent a significantly greater proportion of dogs in the community. All dogs bite, some more seriously than others.

The CHAIRMAN — I want to round off. Mr O'Donoghue, you have a detailed and important knowledge of dogs, and if there are other issues you believe government should have knowledge of we would be happy to have you relay your thoughts. I want to make sure the committee has covered all the principal issues relating to entry, search and seizure.

Mr LANGUILLER — You spoke about council officers having certain powers. There are some crossings in the municipality of Brimbank that will never be monitored by the police. It would be useful if drivers were booked when they drove through school crossings, but it is most unlikely that police officers will have the resources to monitor those areas. Do you have specific recommendations in relation to certain powers you think councils may more appropriately undertake, perhaps for traffic offences of a minor nature? You may provide an answer to that today, or later if you wish.

Mr O'DONOGHUE — I understand that school crossings are a big problem, but many of them are manned. The people who man school crossings are not authorised officers in the normal sense. They do not have appropriate training for prosecution, and they are relatively low paid. The MAV has interacted with Vicroads, and there are booklets on how school crossing supervisors operate. It has also interacted with the police in terms of what they would take up regarding reports. Some reports about vehicles not stopping at intersections or school crossings or such require the drivers to give their names and addresses. A form has been prepared so people can get the details and hand it to their supervisor, who in turn can take it up with the police. Police attend when they can, but because of time constraints they cannot do that all the time. We are looking at a report mechanism for

dangerous activities so there can be some follow-up. It is not a perfect system, and everything comes back to resource allocation and priorities in resource allocation.

The CHAIRMAN — Do you have any complaints data in relation to the use of powers by local government agencies? Is that an issue that has arisen?

Mr O'DONOGHUE — No. We have been talking to the Ombudsman, particularly about the whistleblowers legislation. He has been trying to encourage councils to set up an official complaints mechanism, like a mini-ombudsman, if you like.

The CHAIRMAN — Perhaps not using the name 'ombudsman', according to his evidence yesterday.

Mr O'DONOGHUE — Councils are becoming more serious about complaints, and there is more emphasis on communication and persuasive tactics. A complaint against a local laws officer of overreaction would be taken extremely seriously. That approach could result in people losing their job. I have never heard of a significant report of excessive reaction by people, but if that comes to light those people would generally be weeded out.

The CHAIRMAN — Mr Diepstraten, do you have any further comments you would like to make?

Mr DIEPSTRATEN — I have not heard of recorded cases where health officers have exceeded their powers under the legislation.

The CHAIRMAN — Should you have further comments you wish to make regarding the terms of reference, the committee would be happy to take them on board over the next few months. We would be pleased to receive any further assistance.

Thank you very much for taking the time to attend today and for the thought you have given to your submission.

Witnesses withdrew.